IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 5103 of 2004

Central Bank of India ..Petitioners

vs

Shri Kurian Babu & others ..Respondents

Mr.H.N.Thakore with Ms.Jyoti Ghagl i/b M/s Thakore Jariwala and Associates for petitioners.

Mr.Kurian Babu present in person.

CORAM: A.P.SHAH
& S.U.KAMDAR JJ.
17th August, 2004

ORAL ORDER:(Per A.P.Shah J.)

1. Rule. Respondent no.1 appearing for himself and for respondent no.2 waives service.

2. By consent rule is made returnable forthwith.

3. This petition, inter alia, raises a question of construction of section 20(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993). The petitioner is a Nationalised Bank and had filed a civil suit No.493 of 1989 in the court of Civil Judge, Sr.Dn., Pune and then the said suit was transferred to the Debts Recovery Tribunal, Pune being Original Application No. 30/P/2000 claiming a sum of Rs.11,05,667.91 together with interest with respect to various facilities granted to respondent nos.3 and 4 and to

which respondent nos. 1 and 2 stood as guarantors. As the original documents were not traceable, the petitioner took out an application being Exh.43 for permission to lead secondary evidence. The Debts Recovery Tribunal, Pune vide its order dated 16th June, 2003 allowed the petitioner to lead secondary evidence. Respondent nos. 1 and 2 challenged the said order before the Debts Recovery Appellate Tribunal in Misc.Appeal No.319 of 2003. By order dated 10th February, 2004, the Appellate Tribunal was pleased to allow the said appeal and set aside the order dated 16th June, 2003 passed by the Debts Recovery Tribunal, Pune. The petitioner Bank now approaches this Court by means of this writ petition under Articles 226 and 227 of the Constitution. The main question in this petition is whether an appeal lay to the Debts Recovery Appellate Tribunal under sec.20(1) from the aforesaid order of the Debts Recovery Tribunal.

4. The Recovery of the Debts Due to the Banks and Financial Institutions Act was enacted in the wake of recommendations made by Narasinham Committee with an object to provide expeditious adjudication and recovery of debts due to the Banks and Financial Institutions and for matters connected therewith or incidental thereto. Under section 3

of the Act, Central Government is empowered to constitute one or more Debts Recovery Tribunals. Section 17 of the Act provides that the Tribunal shall exercise jurisdiction, power and authority to entertain and decide the application from the Bank and Financial Institutions for recovery of Debts due to such Bank or financial institution. Section 19 lays down the procedure before the Debts Recovery Tribunal and confers powers upon the Tribunal to pass interim or final orders, including the order for payment of interest. Sub-section (24) of Section 19 prescribes that the application made to the Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within 180 days from the date of receipt of the application. Section 20 gives right of an appeal to the Debts Recovery Appellate Tribunal from the order passed by the Debts Recovery Tribunal. Section 20(1) reads as under:

"20. Appeal to the Appellate Tribunal: (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter."

5. Mr.Thakore, appearing for the petitioner submitted that the order of the Debts Recovery Tribunal was an order made on procedural matters and rights of the parties are not affected by such order and consequently the appeal filed before the Appellate Tribunal was not maintainable. On the other hand respondent no.1 contended that section 20(1) creates a wide and broad appellate jurisdiction and every kind of judicial order could be challenged in an appeal. The question before us, therefore, is whether the appeal filed by respondent nos.1 and 2 against the order of the Debts Recovery Tribunal was maintainable under sec.20 of the Act.

6. In our opinion, in the context of the scheme of the Recovery of Debts Due to Banks and Financial Institutions Act, it is difficult to accept the submission of respondent no.1 that each and every order made by the Debts Recovery Tribunal is intended to be subjected to an appeal under sec.20. Mere procedural orders are not the orders which can be taken up and challenged under sec.20(1) of the said Act. Unless the orders formally adjudicate and affect the rights of the parties it is difficult to conceive that the remedy of an appeal

under sec.20(1) would be available. Section 20(1), in our opinion, does not contemplate an appeal against the order which is merely a procedural order and against such an order appeal could not lie under sec.20(1).

7. In Central Bank of India Ltd. Vs. Gokal Chand, AIR 1967 S.C.799, the Supreme Court was concerned with sec.38 of the Delhi Rent Control Act which provided an appeal from every order of the Controller. The Supreme Court held that the phrase "every order" is not so wide as to include interlocutory orders which are merely procedural and do not affect the rights or liabilities of the parties. At page 800 it was observed thus:

> " The object of Ss.38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S.38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory

orders under Ss.36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act and is

> subject to appeal under sec.38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an exparte order sis subject to appeal to the Rent Control Tribunal."

6. The Supreme Court referred to its earlier decision in Shankarlal Aggarwal Vs.Shankarlal Poddar, AIR 1965 SC 507 where the Court decided that the words "from any order or decision made or given in the matter of winding up of the company by Court" in Sec.202 of the Indian Companies Act, 1913, through wide, would exclude merely procedural orders or those which did not affect the rights or liabilities of the parties.

7. In Bant Singh Gill Vs.Shanti Devi, A.I.R.1967 SC 1360 again the relevant provisions of the Delhi Rent Control Act came up for consideration. The Trial Court had held in the said case that the suit had not abated. The Supreme Court held that it was an interlocutory order and cannot be considered as an appellable order immediately. Whether the suit stood abated could be considered in an appeal from the ultimate order, in case the party becomes aggrieved by the ultimate order.

8. The observations of the Supreme Court in the aforesaid judgments would equally govern the relevant words used in section 20(1) of the Act. The rights and liabilities of the parties would be normally decided by the final order. Very rarely the interlocutory order on procedural matter would affect the rights of the parties. The course of a litigation should normally proceed unhampered. If at every stage the appellate court has to entertain an appeal there cannot be a speedy culmination of the litigation at all. It is with a view to expedite the trial and conclusion of a litigation before the original authority or court, the Supreme Court has limited the scope of the appellate jurisdiction in the manner stated in Central Bank's case. Therefore, we have no hesitation to hold that purely procedural orders which do not affect the substantive right of the parties are not appellable under sec.20(1) of the Act.

9. It was contended before us by respondent no.1 that the learned single Judge of Delhi High Court has held in Shoes East Ltd. Vs.Allahabad Bank; AIR 1997 Delhi 325 that every order passed by the Debts Recovery Tribunal is appellable. We are afraid that this decision does not support the respondents and on the other hand it holds that the

order of the Debts Recovery Tribunal which affects the rights and liabilities of the parties is an appellable order under the Act. In the present case, the order passed by the Debts Recovery Tribunal was merely a procedural order and it did not affect the rights and liabilities of the parties. It was contended before us by the 1st respondent that the contents of the affidavit filed on behalf of the Bank are mechanical and none of them has stated that respondent nos. 1 and 2 signed the guarantee deed in their presence or that they had seen the documents and, therefore, they could vouch that the xerox copies which the Bank was seeking to tender now in lieu of the original documents are the xerox copies of the original documents signed by the respondents. The Bank, therefore, cannot claim the benefit of sec.65 of the Evidence Act because the Bank has failed to come out with credible evidence about the loss of the original documents. We do not propose to go into these questions because these questions can be appropriately considered by the Appellate Tribunal in appeal filed against the final order that may be passed by the Debts Recovery Tribunal. In case any adverse order is passed by the Debts Recovery Tribunal against the respondents the respondents will be entitled to agitate all the issues in the

appeal that would be filed against such order.

10. For the reasons stated above, we hold that the appeal filed by respondent nos. 1 and 2 before the Appellate Tribunal was not maintainable. Accordingly, the impugned order of the Appellate Tribunal dated 10th February, 2004 is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

11. On the request of respondent no.1, operation of this order is stayed for a period of six weeks.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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Writ Petition No. 5103 of 2004

Date of Judgment: 17th August,2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?